

(f) You must permanently label engines exempted under this section to clearly indicate that they are to be used only for competition. Failure to properly label an engine will void the exemption for that engine.

(g) If we request it, you must provide us any information we need to determine whether the engines are used solely for competition. This would generally include documentation regarding the number of engines and the ultimate purchaser of each engine as well as any documentation showing an equipment manufacturer's request for an exempted engine. Keep these records for five years.

**§ 1054.625 What requirements apply under the Transition Program for Equipment Manufacturers?**

The provisions of this section allow equipment manufacturers to produce equipment with Class II engines that are subject to less stringent exhaust emission standards after the Phase 3 emission standards begin to apply. To be eligible to use these provisions, you must follow all the instructions in this section. See § 1054.626 for requirements that apply specifically to companies that manufacture equipment outside the United States and to companies that import such equipment without manufacturing it. Engines and equipment you produce under this section are exempt from the prohibitions in 40 CFR 1068.101(a)(1) with respect to exhaust emissions, subject to the provisions of this section. Except as specified in paragraph (e) of this section, equipment exempted under this section must meet all applicable requirements related to evaporative emissions.

(a) *General.* If you are an equipment manufacturer, you may introduce into U.S. commerce limited numbers of nonroad equipment with Class II engines exempted under this section. You may use the exemptions in this section only if you have primary responsibility for designing and manufacturing equipment and your manufacturing procedures include installing some engines in this equipment. Consider all U.S.-directed equipment production in showing that you meet the requirements of this section, including those from any parent or subsidiary companies and

those from any other companies you license to produce equipment for you. If you produce a type of equipment that has more than one engine, count each engine separately. These provisions are available during the first four model years that the Phase 3 exhaust emission standards apply.

(b) *Allowances.* Calculate how many pieces of equipment with exempted engines you may produce under this section by determining your U.S.-directed production volume of equipment with Class II engines from January 1, 2007 through December 31, 2009, calculating your annual average production for this period, and multiplying the average value by 0.3. The same calculation applies for small-volume equipment manufacturers, except that average annual production is multiplied by 2.0. For companies with no eligible production in a given year, calculate annual average production based only on those years in which you produce equipment during the specified period with Class II engines for sale in the United States. Use these allowances for equipment using model year 2011 and later Class II engines. You may use these allowances for equipment you produce before December 31, 2014.

(c) *Access to exempted engines.* You may use one of the following approaches to get exempted engines under this section:

(1) Request a certain number of exempted Class II engines from the engine manufacturer as described in paragraph (j)(1) of this section.

(2) You may make arrangements with the engine manufacturer to receive an engine without an exhaust system and install exhaust systems without aftertreatment that would otherwise be required to meet Phase 3 standards, as described in paragraph (j)(2) of this section. You must follow the engine manufacturer's instructions for installing noncatalyzed mufflers. You must keep records to show which engines you modify as described in this paragraph (c)(2) and make them available to the engine manufacturer for any auditing under the provisions of § 1054.610. If you do not place the label we specify in paragraph (f) of this section adjacent to the engine manufacturer's emission control information label, you must

place an additional permanent label as close as possible to the engine's emission control information label where it will be readily visible in the final installation with at least the following items:

(i) Your corporate name and trademark.

(ii) The following statement: "THIS ENGINE MEETS PHASE 2 STANDARDS UNDER §1054.625(c)(2)."

(d) *Inclusion of engines not subject to Phase 3 standards.* The following provisions apply to engines that are not subject to Phase 3 standards:

(1) If you use the provisions of 40 CFR 1068.105(a) to use up your inventories of engines not certified to new emission standards, do not include these units in your count of equipment with exempted engines under paragraph (g)(2) of this section.

(2) If you install engines that are exempted from the Phase 3 standards for any reason, other than for equipment-manufacturer allowances under this section, do not include these units in your count of equipment with exempted engines under paragraph (g)(2) of this section. For example, if we grant a hardship exemption for the engine manufacturer, you may count these as compliant engines under this section. This paragraph (d)(2) applies only if the engine has a permanent label describing why it is exempted from the Phase 3 standards.

(e) *Standards.* If you produce equipment with exempted engines under this section, the engines must meet the Phase 2 emission standards specified in 40 CFR part 90. Any equipment using exempted engines under this section is also exempt from the running loss standard specified in §1054.112.

(f) *Equipment labeling.* You must add a permanent label, written legibly in English, to the engine or another readily visible part of each piece of equipment with exempted engines you produce under this section. This label, which supplements the engine manufacturer's emission control information label, must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION".

(2) Your corporate name and trademark.

(3) The calendar year in which the equipment is manufactured.

(4) An e-mail address and phone number to contact for further information, or a Web site that includes this contact information.

(5) The following statement: THIS EQUIPMENT [or identify the type of equipment] HAS AN ENGINE THAT MEETS U.S. EPA EMISSION STANDARDS UNDER 40 CFR 1054.625.

(g) *Notification and reporting.* You must notify us of your intent to produce equipment under the provisions of this section and send us an annual report to verify that you are not exceeding the production limits for equipment with exempted engines, as follows:

(1) Send the Designated Compliance Officer a written notice of your intent before you use the provisions of this section including all the following:

(i) Your company's name and address, and your parent company's name and address, if applicable. Also identify the names of any other companies operating under the same parent company.

(ii) The name, phone number and e-mail address of a person to contact for more information.

(iii) The calendar years in which you expect to use the exemption provisions of this section.

(iv) The name and address of each company you expect to produce engines for the equipment you manufacture under this section.

(v) How many pieces of equipment with exempted engines you may sell under this section, as described in paragraph (b) of this section. Include your production figures for the period from January 1, 2007 through December 31, 2009, including figures broken down by equipment model and calendar year. You may send corrected figures with lower production volumes anytime after your initial notification. To make a correction for higher production volumes, send us the corrected figures by September 30, 2010. We may ask you to give us additional information to confirm your production figures.

(2) For each year that you use the provisions of this section, send the Designated Compliance Officer a written report by March 31 of the following

year. Identify the following things in your report:

(i) The total count of equipment with exempted engines you sold in the preceding year, based on actual U.S.-directed production information. If you produce equipment in the 2010 calendar year with exempted engines from the 2011 model year, include these units in your March 31, 2012 report.

(ii) Cumulative figures describing how many pieces of equipment with exempted engines you have produced for all the years you used the provisions of this section.

(iii) The manufacturer of the engine installed in the equipment you produce under this section, if this is different than you specified under paragraph (g)(1)(iv) of this section.

(3) If you send your initial notification under paragraph (g)(1) of this section after the specified deadline, we may approve your use of allowances under this section. In your request, describe why you were unable to meet the deadline.

(h) *Recordkeeping.* Keep the following records of all equipment with exempted engines you produce under this section until at least December 31, 2019:

(1) The model number for each piece of equipment.

(2) Detailed figures for determining how many pieces of equipment with exempted engines you may produce under this section, as described in paragraph (b) of this section.

(3) The notifications and reports we require under paragraph (g) of this section.

(i) *Enforcement.* Producing more exempted engines or equipment than we allow under this section or installing engines that do not meet the emission standards of paragraph (e) of this section violates the prohibitions in 40 CFR 1068.101(a)(1). You must give us the records we require under this section if we ask for them (see 40 CFR 1068.101(a)(2)).

(j) *Provisions for engine manufacturers.* As an engine manufacturer, use one of the following approaches to produce exempted engines under this section:

(1) The provisions of this paragraph (j)(1) apply if you do not use the delegated-assembly provisions of § 1054.610 for any of the engines in an engine

family. You must have written assurance from equipment manufacturers or your authorized distributors that they need a certain number of exempted engines under this section. Keep these records for at least five years after you stop producing engines under this section. You must also send us an annual report of the engines you produce under this section, as described under § 1054.250(a). The engines must meet the emission standards in paragraph (e) of this section and you must meet all the requirements of 40 CFR 1068.265. You must meet the labeling requirements in 40 CFR 90.114, but add the following statement instead of the compliance statement in 40 CFR 90.114(b)(7): THIS ENGINE MEETS U.S. EPA EMISSION STANDARDS UNDER 40 CFR 1054.625 AND MUST BE USED ONLY UNDER THOSE FLEXIBILITY PROVISIONS.

(2) The following provisions apply if you notify us that you plan to use the delegated-assembly provisions of § 1054.610 for one or more equipment manufacturers for an engine family:

(i) Include test data in your application for certification showing that your engines will meet the standards specified in paragraph (e) of this section if they have a noncatalyzed muffler in place of the aftertreatment that is part of the certified configuration. Use good engineering judgment for these measurements, which may involve sampling exhaust upstream of the catalyst or operating the engine with a noncatalyzed muffler. This may be based on emission measurements from previous model years if the data is still appropriate for the current engine configuration.

(ii) Produce all your engines with the emission control information label we specify in § 1054.135. The engines must also be labeled as specified in 40 CFR 1068.261.

(iii) Include in the installation instructions required under § 1054.610 any appropriate instructions or limitations on installing noncatalyzed mufflers to ensure that the fully assembled engine will meet the emission standards specified in paragraph (e) of this section. You may identify an appropriate range of backpressures, but this may not involve any instructions related to

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changing the fuel system for different fueling rates.

(iv) Use one of the following approaches to properly account for emission credits if your engine family generates exhaust emission credits under subpart H of this part:

(A) Multiply the credits calculated under §1054.705 by 0.9. This is based on the expectation that equipment manufacturers will modify 10 percent of the engines to no longer meet Phase 3 standards.

(B) Include in your emission-credit calculations only those engines for which you can establish that the equipment manufacturer did not use the provisions of this section. This would involve an evaluation for each affected equipment manufacturer. For example, under this provision you may count emission credits for engines that you sell to equipment manufacturers with which you have no contract for delegated assembly. You may also count emission credits for engines that you sell to equipment manufacturers with which you have a delegated-assembly relationship if you confirm that the equipment manufacturer did not use the provisions of this section for those engines.

(k) *Additional exemptions for mid-sized companies.* If your annual production of equipment with Class II engines in 2007, 2008, and 2009 is between 5,000 and 50,000 units, you may request additional engine allowances under this section. To do this, notify us by January 31, 2010 if you believe the provisions of this section will not allow you to sell certain equipment models starting in the 2011 model year. In your notification, show us that you will be able to produce a number of Class II equipment models representing at least half your total U.S.-directed production volume in the 2011 model year that will be compliant with all Phase 3 exhaust and evaporative emission standards. Also describe why you need more allowances under this section to accommodate anticipated changes in engine designs resulting from engine manufacturers' compliance with changing exhaust emission standards. Include a proposal for the number of additional allowances you would need, with supporting rationale. We may approve allowances

up to a total of 100 percent of the average annual U.S.-directed production volume you report under paragraph (b) of this section (in place of the 30 percent that is otherwise allowed).

### **§ 1054.626 What special provisions apply to equipment imported under the Transition Program for Equipment Manufacturers?**

This section describes requirements that apply to equipment manufacturers using the provisions of §1054.625 for equipment produced outside the United States. Note that §1054.625 limits these provisions to equipment manufacturers that install some engines and have primary responsibility for designing and manufacturing equipment. Companies that import equipment into the United States without meeting these criteria are not eligible for allowances under §1054.625. Such importers may import equipment with exempted engines only as described in paragraph (b) of this section.

(a) You or someone else may import your equipment with exempted engines under this section if you comply with the provisions in §1054.625 and commit to the following:

(1) Give any EPA inspector or auditor complete and immediate access to inspect and audit, as follows:

(i) Inspections and audits may be announced or unannounced.

(ii) Inspections and audits may be performed by EPA employees or EPA contractors.

(iii) You must provide access to any location where—

(A) Any nonroad engine, equipment, or vehicle is produced or stored.

(B) Documents related to manufacturer operations are kept.

(C) Equipment, engines, or vehicles are tested or stored for testing.

(iv) You must provide any documents requested by an EPA inspector or auditor that are related to matters covered by the inspections or audit.

(v) EPA inspections and audits may include review and copying of any documents related to demonstrating compliance with the exemptions in §1054.625.

(vi) EPA inspections and audits may include inspection and evaluation of